Banking & Payments Federation Ireland

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Correspondence Item No: 2019/1020

Detailed Scrutiny - No Consent, No Sale Bill 2019 [PMB]

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BPFI Submission

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Banking & Payments Federation Ireland

Introduction

Banking & Payments Federation Ireland (BPFI) is the voice of banking and payments in Ireland. Representing over 70 domestic and international members institutions, we mobilise the sector's collective resources and insights to deliver value and benefit to members, enabling them to build competitive sustainable businesses which support customers, the economy and society.

BPFI welcomes the opportunity to respond to the request for a written submission on the No Consent, No Sale Bill 2019 received from the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach.

Background

The ability of a lender to transfer mortgages is a critical component of the ability of a bank to access secured debt capital markets such as covered bonds or securitisation markets. In line with other jurisdictions our current mortgage documentation contains those consents to comply with current market conventions and which ensure full transferability of loans.

Irish mortgage lenders have implemented a range of consumer protection protocols which provides key safeguards for borrowers in difficulty. Also, when a loan is sold by a lender and the loan is subject to CCMA (Code of Conduct on Mortgage Arrears) and other relevant regulations, the purchaser of the loan must continue to afford the same protections to the borrower.

Impact on Consumers

The No Consent, No Sale Bill will have the following impacts on consumers:

1. **A reduction in the availability of mortgages,** with banks significantly impacted in their ability to raise funding. With the ability to raise capital greatly diminished banks would have less money to lend and fewer people could get the mortgage they need to buy their home.

2. **An increase in the cost of mortgages,** as the cost of funding increases for banks, cost would in turn increase for their customers.

3. **Less competition in the mortgage market** as the Irish market becomes less attractive to new lenders and the possibility that existing lenders might exit the market altogether.

Impact on Irish Economy

The ability of banks to access wholesale markets for funding purposes and the ability to sell portfolios for the management of Non-Performing Loans (NPLs) is of critical importance to banks, financial stability and the wider economy**.** The impacts on the wider economy can be broadly split into three categories as follows;

1. **Reduced funding availability** would lead to a weakening of the Irish banking system resulting in a detrimental impact on banks' ability to support the Irish economy. This is driven by

a. Lower funding capacity which would result in less credit being available for the Irish economy.
b. Less collateral available at the European Central Bank which would increase the liquidity risk of Irish banks.
c. Given the regulatory focus, the failure to deliver lower NPLs which would increase the vulnerability of the Irish banking system, potentially resulting in higher capital requirements and reduce the ability of Irish banks to fund the Irish economy.

The drivers for banks to securitise mortgage loans are to raise funding at an efficient level (alongside retail and corporate deposits), to facilitate the passing on of an efficient cost of funds to their mortgage borrowers and to continue to lend competitively.

2. Higher cost of mortgages

a. Increased risk weights being applied to Irish mortgage loans, due to increased challenges in realising the underlying collateral with resulting higher amounts of capital to be held against such loans.
b. Banks' higher funding costs.
c. Less competition in the mortgage market as the inability to realise underlying collateral and/or to fund in covered bond/securitisation format would deter new entrants.

3. Market attractiveness to potential new and existing market participants

a. This would make the Irish market less attractive to new entrants and will reduce competition. Recent new mortgage market entrants are primarily reliant on securitisation markets to fund their activities. Therefore, there would be unintended consequences for consumers.
b. Merger activity could be curtailed if customer consent were required to transfer or allocate assets between entities.
c. There is a clear need for certainty among investors and issuers that Ireland is a good jurisdiction for securitisation and covered bonds issuance now and into the future.

The legal implications

Any Bill containing these measures would amount to a retrospective change to the existing contracts that Irish mortgage lenders have in place with their borrowers, which provides that the borrower consents to the bank transferring a loan without the need for any further consent.

As that was the basis for the loan, if enacted, this would be a unilateral amendment by the legislature to the loan agreement giving the borrowers a right of veto to a proposed transfer of a mortgage loan.

In our view, this would amount to an unlawful interference with the bank's and borrower's contract. In addition, the constitutionality of the Bill, if enacted, would be in question. Article 43 of the Constitution acknowledges the right to the private ownership of external goods and "The State

accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property".

Existing mortgages were signed in accordance with the agreed terms and conditions and in accordance with the provisions of all applicable laws, including the protection afforded to both lenders and borrowers by Article 43 of the Constitution.

To interfere with these rights by seeking to abolish a right of transfer would be unconstitutional.

This Bill seeks to apply to mortgages drawn down prior to the enacting of the legislation. To seek to apply it to such mortgages would be unconstitutional and any attempt to seek to apply the provisions of the Bill, retrospectively, would certainly be the subject of a constitutional challenge. Any such challenge could take many years to conclude. Given the legal uncertainty that would ensue, the implications for the Irish mortgage market – in terms of mortgage funding and pricing – and the attractiveness of the market to investors and potential new entrants would be very adverse.

Resolution of Non-Performing Loans (NPLs)

This Bill needs to be considered in the context of a mandate from ECB SSM, to Irish Banks, to reduce the level of NPLs as a percentage of total loans to the EU average of 5% within three years. This mandate has necessarily, in view of the difficulties associated with those borrowers with mortgage arrears in excess of 720+ days, caused banks to pursue the sale of NPL portfolios as one option to achieve this ECB SSM requirement.

The introduction of legislation that would adversely impact on these efforts would result in negative consequences for both consumers and lenders in Ireland. The proposed legislation would render it impossible for banks to complete distressed loan sales, directly impacting banks' capacity to reduce NPLs. This would have significant downstream consequences including:

- Limitations on banks' options to reduce NPLs would heighten focus on the legal enforcement process with commensurate borrower impacts (e.g. repossessions).
- Investor risk appetite would be significantly impacted (if not entirely dissipated) with a consequent re-evaluation of pricing of any loan sales.
- Banks options to meet their respective ECB NPL targets would be severely impacted in 2019 and beyond. Failure to meet NPL targets would lead to the ECB imposing higher capital requirements and will impact bank valuations.
- The above combination of factors will impact the cost and availability of mortgage lending.

If enacted, this Bill would also have a detrimental impact on banks' ability to support the Irish economy, with the following direct consequences:

- Increased risk weights being applied to Irish mortgage loans, due to challenges in realising the underlying collateral.

- Capital required to be held, and cost thereof, against such loans continues to rise due to the perceived, heightened risk associated with Irish mortgage loans.
- Further capital constraints could impact on the ability of banks to fund the real economy.
- The risk weights applied to new mortgage loans impacting the pricing of such loans.

Closing comments

This Bill does not serve the interests of the consumer. It potentially reduces the availability of mortgages, increases the cost of available mortgages and gives rise to less competition in the mortgage market.